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**FEDERAL ELECTION COMMISSION**  
**999 E Street, NW**  
**Washington, DC 20463**

**FIRST GENERAL COUNSEL'S REPORT**

RAD REFERRAL 13L-57

DATE RECEIVED: January 10, 2014

LAST RESPONSE RECEIVED: March 27, 2014

DATE ACTIVATED: April 17, 2014

EXPIRATION OF SOL: August 2, 2017

ELECTION CYCLE: 2012

**SOURCE:**

Internally Generated

**RESPONDENTS:**

McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

11 C.F.R. § 102.9(e)

11 C.F.R. § 110.1(b)

11 C.F.R. § 110.1(j)

11 C.F.R. § 110.2(b)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Reports Analysis Division ("RAD") referred the principal campaign committee of Thaddeus McCotter, the McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer (the "Committee"), to the Office of General Counsel ("OGC") because the Committee failed to refund or redesignate \$60,500 in general election contributions within 60 days of McCotter's withdrawal from the 2012 primary election.

As discussed below, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) and authorize pre-probable cause conciliation.

1     **II.     FACTS**

2             Thaddeus McCotter was a candidate for reelection in the 2012 primary election for the  
3     11th Congressional District of Michigan. He withdrew from the primary on June 2, 2012.<sup>1</sup> At  
4     the time McCotter withdrew from the primary, the Committee had received \$60,500 in  
5     contributions designated for the general election from 24 separate contributors (13 individuals,  
6     10 multicandidate political action committees, and one federal candidate committee). *See* RAD  
7     Referral at 1-3.

8             On May 17, 2013, RAD sent the Committee a Request for Additional Information  
9     ("RFAI") concerning its 2012 October Quarterly Report noting, among other items, that since  
10    the candidate did not participate in the general election, any contributions received for that  
11    election must be returned to donors within 60 days after the candidate's announcement not to  
12    seek office or reelection. *See* RAD Referral at 3. The RFAI also requests that the Committee  
13    provide documentation of the refunds. *Id.*

14            On June 18, 2013, the Committee responded to the RFAI by filing a Miscellaneous  
15    Electronic Submission ("Form 99") signed by the treasurer, Robert A. Bovitz, which stated in  
16    part:

17                   I am unable to address item 1 (refund of general election contributions)  
18                   of your letter, as I do not had [sic] access to the records and have been  
19                   unable to get any answers. The extent of my duties was to make sure the  
20                   reports were filed.  
21

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<sup>1</sup>     *See* Todd Spangler, Kathleen Gray, Bill Laitner, *McCotter ends write in campaign for election*, Detroit Free Press, June 2, 2012, <http://www.freep.com/article/20120602/NEWS15/120602023/Thaddeus-McCotter-re-election-congress>. After failing to obtain a sufficient number of valid signatures from registered voters to qualify for the primary ballot, McCotter briefly conducted a write-in campaign before announcing his withdrawal from the primary on June 2, 2012. McCotter resigned from Congress on July 6, 2012. *See* RAD Referral at 3.

1 On August 12, 2013, RAD contacted Bovitz to encourage the Committee to resolve the  
2 issue relating to the general election contributions, and Bovitz urged RAD to contact the  
3 Committee's consultant, Mindy Fernandes, or the Committee's bookkeeper, Randall Thompson,  
4 about this issue. *See* RAD Referral at 3. Thereafter, RAD contacted Fernandes who referred  
5 RAD to Thompson. *Id.* When RAD spoke with Thompson on August 30, 2013, he stated that  
6 the Committee's reporting of its cash-on-hand balance was incorrect and that there were no funds  
7 in its account to refund the 2012 general election contributions. *Id.* Thompson later advised  
8 RAD that he was examining the Committee's bank statements and comparing them to the  
9 disclosure reports in an attempt to identify the cause of the cash-on-hand discrepancy. *Id.* at 4.  
10 RAD advised the Committee to clarify the cash discrepancy by submitting a Form 99. *See id.*

11 On October 17, 2013, the Committee filed a Form 99, which stated, in part:

12 Please be advised that the Committee has discovered a discrepancy in the  
13 cash account. The ending cash on hand was reported as \$22,509.76 per the  
14 last report. However, at that point all cash in the bank accounts had been  
15 disbursed and in reality there was no cash on hand. The committee is looking  
16 into this further to find when and where the discrepancy began and will amend  
17 the reports as needed.

18  
19 Although the Committee later amended its reports to correct the cash-on-hand errors and related  
20 misreporting, it has never provided any documentation that it refunded any of the general  
21 election contributions.<sup>2</sup>

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<sup>2</sup> The Committee disclosed \$121,152 in cash-on-hand as of June 30, 2012, on its 2012 July Quarterly Report, and has not amended that Report. The Committee originally reported \$40,380 in cash-on hand as of September 30, 2012, on its 2012 October Quarterly Report. On March 27, 2014, the Committee amended its 2012 October Quarterly, 2012 Year-End, 2013 April Quarterly and 2013 July Quarterly Reports to reflect adjustments to its cash-on-hand. It appears that the cash-on-hand discrepancy initially appeared on the 2012 October Quarterly Report and resulted primarily from the failure to report disbursements to two law firms and a fundraising consultant. *See* Amended 2012 October Quarterly Report dated March 27, 2014 at 7, 9, and 10. The Amended 2012 October Quarterly Report disclosed \$17,033 in cash-on-hand as of September 30, 2012. The Amended 2013 April Quarterly and 2013 July Quarterly Reports show a zero cash-on-hand balance.

OGC notified the Committee of the referral on January 17, 2014. *See* Letter from Jeff Jordan, Supervisory Att'y, CELA, FEC to Robert A. Bovitz, Treasurer of the Committee (Jan. 14, 2014); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009). On March 27, 2014, we received a response from counsel for the Committee's treasurer indicating that amended reports had been prepared, establishing where all of the money was spent.<sup>3</sup> E-Mail from Joseph Xuereb, counsel for Committee Treasurer, to Donna Rawls, CELA, FEC (Mar. 27, 2014, 03:03 EST). The response does not address the requirement that general election contributions must be refunded, redesignated or reattributed if the candidate does not participate in the general election. *Id.* The Committee did not designate counsel or provide a response to the referral notification.

### III. LEGAL ANALYSIS

Under the Federal Election Campaign Act of 1971, as amended, (the "Act"), an individual may not make a contribution to a candidate with respect to any election in excess of the limits at 2 U.S.C. § 441a(a)(1)(A), which were \$2,500 per election during the 2012 election cycle.<sup>4</sup> A multicandidate political action committee may not make contributions to a candidate in excess of \$5,000 per election.<sup>5</sup> A primary election and general election are each considered a separate "election" under the Act, and the contribution limits are applied separately with respect

<sup>3</sup> The Committee treasurer, Robert A. Bovitz, is a respondent in this matter only in his official capacity as the designated representative of the Committee. *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 4 (January 3, 2005). Nevertheless, he retained his own separate counsel who does not also represent the Committee. *See* Designation of Counsel form of Robert A. Bovitz dated February 25, 2014 and Bovitz's response dated March 27, 2014.

<sup>4</sup> *See* 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

<sup>5</sup> *See* 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).

1 to each election.<sup>6</sup> Candidates and political committees are prohibited from knowingly accepting  
2 excessive contributions.<sup>7</sup>

3 The Commission's regulations permit a candidate's committee to receive contributions  
4 for the general election prior to the primary election.<sup>8</sup> If, however, the candidate does not  
5 become a candidate in the general election, the committee must: (1) refund the contributions  
6 designated for the general election; (2) redesignate such contributions in accordance with  
7 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with  
8 11 C.F.R. § 110.1(k)(3).<sup>9</sup> The committee must do so within 60 days of the date that the  
9 committee has actual notice of the need to redesignate, reattribute, or refund the contributions,  
10 such as the date the candidate loses the primary or withdraws from the campaign.<sup>10</sup>

11 Redesignation of general election contributions may only occur to the extent that the  
12 amount redesignated does not exceed the contributor's contribution limit for the primary and the

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<sup>6</sup> See 2 U.S.C. §§ 431(1)(A) and 441a(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

<sup>7</sup> See 2 U.S.C. § 441a(f).

<sup>8</sup> See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

<sup>9</sup> See 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

<sup>10</sup> See Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

amounts redesignated do not exceed the net debts outstanding from the primary.<sup>11</sup> If a committee deposits contributions that exceed its net debts outstanding, it must, within 60 days of accepting the excessive contributions, refund, redesignate or reattribute the excessive contributions.<sup>12</sup> Likewise, reattribution of a general election contribution may only occur to the extent that such attribution does not exceed the contributor's contribution limits.<sup>13</sup>

In this matter, the Committee accepted general election contributions totaling \$60,500 that were designated for the 2012 general election, but were not redesignated, reattributed or refunded within 60 days after the candidate's June 2, 2012 withdrawal from the primary. *See* 11 C.F.R. § 102.9(e)(3).

Based on the foregoing, we recommend that the Commission find reason to believe that McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.

<sup>11</sup> *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); *see also* AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

<sup>12</sup> *See* 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i); *see also* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3).

<sup>13</sup> *See* 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03 (Obama) at 3.

16

2. Find reason to believe that McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer violated 2 U.S.C. § 441a(f).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with McCotter Congressional Committee and Robert A. Bovitz in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.
6. Approve the appropriate letter.

Daniel A. Petalas  
Associate General Counsel

Date

7-16-14

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